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FOLEY AND LARDNER LLP
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AUG 26 2009

OFFICE OF PETITIONS

In re Application of :
Sendelbach et al. :
Application No. 10/537,709 : LETTER REGARDING
Filed: February 6, 2006 : PATENT TERM ADJUSTMENT
Attorney Docket No. 076326-0305 :

This is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT" filed March 23, 2009. Pursuant to applicants' duty of good faith and candor to the Office, applicants request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the patent term adjustment is GRANTED.

The Office has updated the PALM and PAIR screens to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is one hundred twenty-four (124) days. A copy of the updated PALM screen, showing the corrected determination, is enclosed.

On December 31, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment is 155 days. On March 23, 2009, applicant submitted the instant comment. Applicants state that the USPTO calculation of the patent term adjustment disagrees with the applicants' calculation of the same. Applicants do not state a basis for the request for review of the patent term adjustment.

The record reveals that applicants should have been assessed a delay under 37 CFR 1.704(b)¹ for filing a reply in the form of a Declaration and Power of Attorney on February 6, 2006, in excess of the three month period from the October 6, 2005, mailing date of the Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US). Thus, applicants failed to engage in reasonable efforts to conclude processing or examination of this application. Accordingly, the period of adjustment set forth in § 1.703 should have been reduced under 37 CFR 1.704(b) by 31 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US), January 6, 2006, and ending on the date the Declaration and Power of Attorney was filed, February 6, 2006. A period of reduction of 31 days will be entered.

In view thereof, the determination of the patent term adjustment at the time of the mailing of the notice of allowance is 124 days (187 days of Office delay - 63 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in the calculation of the Patent Term Adjustment, the Office will not assess the \$200.00 application fee under 37 1.18(e). The Office thanks applicants for applicants' good

¹ 37 CFR 1.704(b) states:

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

faith and candor in bringing this to the attention of the Office.

The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of updated PALM screen

Day : Tuesday
Date : 8/25/2009

PALM INTRANET

Time: 11:34:28

PTA Calculations for Application: 10/537709

Application Filing Date:	02/06/2006	PTO Delay (PTO):	187
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	32
Post-Issue Petitions:	0	Total PTA (days):	124
PTO Delay Adjustment:	-31		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
69	08/25/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		31	
62	12/31/2008	MAIL NOTICE OF ALLOWANCE			
61	12/23/2008	ISSUE REVISION COMPLETED			
60	12/23/2008	DOCUMENT VERIFICATION			
59	12/23/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
58	12/22/2008	NOTICE OF ALLOWABILITY			
57	12/16/2008	DATE FORWARDED TO EXAMINER			
56	12/09/2008	RESPONSE AFTER NON-FINAL ACTION			
55	11/04/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
54	10/28/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
53	09/09/2008	MAIL NON-FINAL REJECTION			
52	09/08/2008	NON-FINAL REJECTION			
51	08/21/2008	DATE FORWARDED TO EXAMINER			
50	08/11/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
49	08/21/2008	DATE FORWARDED TO EXAMINER			
48	08/11/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)		32	39
47	08/21/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
46	08/11/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
45	08/11/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
44	07/29/2008	MAIL ADVISORY ACTION (PTOL - 303)			
		EXAMINER INTERVIEW SUMMARY RECORD			

43	07/22/2008	(PTOL - 413)			
42	07/23/2008	ADVISORY ACTION (PTOL-303)			
41	07/18/2008	DATE FORWARDED TO EXAMINER			
40	07/10/2008	AMENDMENT AFTER FINAL REJECTION			
39	04/10/2008	MAIL FINAL REJECTION (PTOL - 326)			
38	04/07/2008	FINAL REJECTION			
37	01/07/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
36	01/07/2008	REFERENCE CAPTURE ON IDS			
35	01/07/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	02/14/2008	DATE FORWARDED TO EXAMINER			
33	01/10/2008	RESPONSE AFTER NON-FINAL ACTION			
32	01/07/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
31	10/17/2007	WITHDRAW FLAGGED FOR 5/25			
30	10/16/2007	FLAGGED FOR 5/25			
29	10/10/2007	MAIL NON-FINAL REJECTION	187		-1
28	10/04/2007	NON-FINAL REJECTION			
27	02/16/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
22	04/11/2007	CASE DOCKETED TO EXAMINER IN GAU			
21	02/16/2007	REFERENCE CAPTURE ON IDS			
20.7	02/16/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	02/16/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	12/01/2006	CASE DOCKETED TO EXAMINER IN GAU			
18	05/18/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
16	02/06/2006	REFERENCE CAPTURE ON IDS			
13	05/18/2006	CASE DOCKETED TO EXAMINER IN GAU			
12	04/02/2006	CLEARED BY OIPE CSR			
11	04/02/2006	CLEARED BY OIPE CSR			
10	04/02/2006	CLEARED BY OIPE CSR			
9	04/02/2006	CLEARED BY OIPE CSR			
8	02/06/2006	371 COMPLETION DATE			
7	03/27/2006	APPLICATION DISPATCHED FROM OIPE			
6	03/27/2006	NOTICE OF DO/EO ACCEPTANCE MAILED			

5	02/06/2006	ADDITIONAL APPLICATION FILING FEES			
4	02/06/2006	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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